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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,639	11/21/2003	Michael J. Faulks	18,098	3447

23556 7590 04/12/2007

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EXAMINER	
HAND, MELANIE JO	
ART UNIT	PAPER NUMBER
3761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/719,639	FAULKS ET AL.	
	Examiner	Art Unit	
	Melanie J. Hand	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18,21-30 and 32-36* is/are pending in the application.

4a) Of the above claim(s) *1-9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-18,21-30,32-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed January 9, 2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the rejection of claims 10,12-16 and 18: Applicant argues that because Miller teaches two materials that together lend a noise-reducing capability, that the device of Miller does not anticipate the claimed invention. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the noise reducing layer consist of one material) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Miller teaches a noise reducing layer. The fact that it comprises two separate materials does not invalidate the device of Miller as prior art. Applicant further argues that because Miller teaches two materials, an adhesive and a release agent, that only the basis weight of the release agent would anticipate the claimed invention. Again, Miller teaches a noise-reducing layer comprised of an adhesive having a basis weight of 50 gsm and a release agent having a basis weight of 0.1-1 gsm, It can clearly be seen that the basis weight of the resulting noise reducing layer is at least about three grams per square meter.

Applicant further argues that Miller does not teach a backsheet and thus does not anticipate the claimed invention. In response to applicant's arguments, the recitation "backsheet" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim

does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicant further argues that claim 10 is not obvious under Miller. Applicant is reminded that Claim 10 is rejected under 35 U.S.C. 102 which concerns itself with novelty, not non-obviousness, and thus the argument will not be addressed herein.

With respect to applicant's arguments regarding the rejection of claims 11,17,21-29 and 32-36: Applicant argues with respect to claim 11 that Miller does not teach or fairly suggest a backsheet with a target region that is at least about 75% of the surface area of a first surface. This argument is insufficient to overcome the rejection for two reasons: 1) applicant does not support the statement with facts from the disclosure or the prior art of Miller, and 2) it is believed that the major weight of the argument is based in applicant's previous argument that Miller does not teach a backsheet, which argument has been addressed *supra*.

Applicant's arguments with respect to claim 17 are similar to those with respect claim 10 regarding the recitation of a backsheet in the preamble of the claim. This argument has been addressed *supra* with respect to claim 10.

Applicant's arguments with respect to claim 21 are based upon applicant's argument regarding Miller's teaching of a noise-reducing layer that comprises two materials. This argument has been addressed *supra* with respect to claim 10, and thus Examiner disagrees with applicant's arguments with respect to claim 21.

Applicants' arguments with regard to dependent claims 22-29 and 32-36 have been fully considered but are not persuasive as Applicants' arguments depend entirely on Applicants' arguments regarding the rejection of claim 21, which depend entirely on Applicants' arguments regarding the rejection of claim 10, which have been addressed *supra*.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 10-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller et al (EP 661,960 B1).

With respect to **Claim 10:** Miller teaches a low noise fastening tape 5 for a diaper comprising a tape substrate layer 6 defining a first surface having a surface area and a target area, and a noise-reducing layer 7 that coats the target region, wherein the noise-reducing layer has a basis weight of 0.78 g/24 in^2, or 50 gsm, which satisfies the relevant limitation in claim 10.

With respect to **Claim 12:** The noise-reducing layer 7 has a basis weight of 0.78 g/24 in^2, or 50 gsm, which satisfies the relevant limitation in claim 12.

With respect to **Claims 13,14:** Noise-reducing layer 7 consists essentially of a synthetic block copolymer, wherein one of the blocks is a polystyrene block.

With respect to **Claims 15,16,18:** The substrate layer 6 comprises a thermoplastic polypropylene polymeric film that is non-elastomeric.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al ('960).

With respect to **Claim 11:** Half of the length of the tape 5 is fixed to the backsheet, therefore the target area comprises 50%, and thus does not anticipate claim 11. However it would be obvious to one of ordinary skill in the art to modify the positioning of the tape such that 75% of the surface area of the first surface of tape substrate 6 is occupied by said target region to allow more surface area for engaging and securing the diaper about the waist of a user.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (EP 661,960 B1) in view of Hwang et al (U.S. Patent No. 4,902,553).

With respect to **Claim 17:** Miller does not teach a nonwoven layer further attached to the substrate layer. Hwang teaches that the noise-reducing layer can comprise two or more sheets of rattle-free film, wherein one of the layers will function as a nonwoven substrate. Since the noise-reducing layer 7 also functions as an adhesive and the nonwoven layer taught by Hwang also functions to reduce noise, it would be obvious to one of ordinary skill in the art to adhere the nonwoven rattle-free layer taught by Hwang to the substrate taught by Miller.

Claims 21-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hwang et al ('553) in view of Miller et al (EP 661,960 B1).

With respect to **Claim 21**: Hwang teaches an absorbent article comprising a bodyside liner, a garment-side outer cover, and absorbent assembly disposed between the bodyside liner. The outer cover is comprised of a liquid-impermeable substrate layer comprised of a thermoplastic polymeric material (bicomponent polyethylene/PET material) defining a first surface having a surface area and a target area defined by the portion of the substrate layer covered by a piece of rattle-free film (noise-reducing layer).

Hwang does not teach that the noise-reducing layer coats the target region, nor does Hwang teach a basis weight for the noise-reducing layer. Miller teaches a low noise fastening tape 5 for a diaper comprising a tape substrate layer 6 defining a first surface having a surface area and a target area, and a noise-reducing layer 7 that coats the target region, wherein the noise-reducing layer has a basis weight of 0.78 g/24 in^2, or 50 gsm, which satisfies the relevant limitation in claim 21. Because the substrate material taught by Miller is substantially identical to the outer cover material taught by Hwang, and because Miller teaches that the noise-reducing substance 7 is also an adhesive, it would be obvious to one of ordinary skill in the art to substitute the rattle-free film taught by Hwang for the noise-reducing adhesive taught by Miller.

With respect to **Claims 22,33:** Half of the length of the tape 5 taught by Miller is fixed to the backsheet, therefore the target area comprises 50%, which satisfies the limitation "at least about 50%" set forth in claim 22.

With respect to **Claim 23:** Half of the length of the tape 5 taught by Miller is fixed to the backsheet, therefore the target area comprises 50%, and thus does not render claim 23 unpatentable. However, it would be obvious to one of ordinary skill in the art to modify the positioning of the tape such that 75% of the surface area of the first surface of tape substrate 6

is occupied by said target region to allow more surface area for engaging and securing the diaper about the waist of a user.

With respect to **Claim 24:** The noise-reducing layer 7 taught by Miller has a basis weight of 0.78 g/24 in^2, or 50 gsm, which satisfies the relevant limitation in claim 24.

With respect to **Claims 25,26,34:** Noise-reducing layer 7 taught by Miller consists essentially of a synthetic block copolymer, wherein one of the blocks is a polystyrene block.

With respect to **Claims 27,28,35:** Hwang teaches a substrate layer comprised of a thermoplastic polymeric material (bicomponent polyethylene/PET material) that is non-elastomeric.

With respect to **Claims 29,36:** Hwang teaches that the noise-reducing layer can comprise two or more sheets of rattle-free film adhered together, wherein one of the layers will function as a nonwoven substrate.

With respect to **Claim 32:** Please see the rejection of claim 21 in addition to the following: Hwang teaches that the rattle-reducing film has a decibel level of less than 44 db at 1 KHz against a background noise level of 43 db. (Col. 9, Table 1) Hwang teaches that if the decibel level of the film is below the level in an office environment, i.e. below 43 dB value, the crinkling is undetectable. Therefore, the film taught by Hwang has its own noise level of 1 dB at 1 kHz when the background noise is removed, which is less than a noise level of 30 dB at 2 kHz and 28 dB at 4 kHz.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

March 25, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER